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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/811,473	03/04/97	SHULTS	M MARKWELL-026

EXAMINER	
CARTER, R #6	

ART UNIT	PAPER NUMBER
1911	

DATE MAILED: 12/07/98

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/811,473

Applicant(s)
Shults et al.

Examiner
Ryan Carter

Group Art Unit
1911



☒ Responsive to communication(s) filed on 3/4/97 and 9/8/98

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) 21-27 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 9/8/98 fails to comply with the provision of 37 CFR 1.98(3)(b) and MPEP § 609 because the published foreign patent applications are not identified by the patent office which published the applications. Because applicant did supply a copy of each of the published applications and it is obvious which patent office published the cited applications, the information disclosure statement has been corrected *ex officio*.

Election/Restriction

2. Claims 21-27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in a conversation with Mr. Tom Browne on behalf of Mr. Pete Carroll, Applicant's representative, on November 20, 1998. As Mr. Browne is not listed on the Power of Attorney in this case, the election was verified by Mr. Carroll in a conversation with the Examiner on December 3, 1998.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brauker et al. '330 in view of Palti. Brauker et al. disclose a close vascularization implant comprising in one embodiment, sensor means for detecting glucose (see Brauker, clms. 1 and 5, for example). The implant further comprises a "device" (or housing), a "second zone" (or bioprotective membrane), and a "first zone" (or angiogenic layer), which is more distal to the device than the second zone. Both zones comprise polytetrafluoroethylene. Brauker further discloses that the vascularizing zone can be made of a number of materials including, but not limited to, polyethylene. The use of electronic means including electrodes for measuring the glucose concentration is very well-known in the art. Such means are disclosed, for example, in Palti. It would have been obvious to one skilled in the art to include such electronic measuring means as those of Palti in the device of Brauker et al., in order to merely process the information obtained by the sensor, indicative of the amount of glucose concentration present in the sample.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Carter whose telephone number is (703) 306-3491. General file and terminal disclaimer inquiries can be directed to the Patent Analyst, NaThanya Ferguson at

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(703) 306-3476. Fee or status inquiries can be directed to the Patent Assistant, Wan Laymon at

(703) 306-3477. The fax number at this location is (703) 308-4363.

RCC

December 4, 1998

Ryan Carter

Patent Adjudicator

Patent Reengineering Lab 1911